1895-056 Chancery Causes: Jacob B. Olinger vs. Louisville & Nashville Railroad Co.
Lee Co.

CH-Contract Dispute
T-Property
Transportation

-Deed

To the Hon. W. T. Miller Judge of the Circuit Court of Lee County Virginia:

Your orator Jacob. B. Olinger who humbly complaining, would respectfully represent, that on the 30th day of September 1889, he made and executed to the Louisville and Nashville Railroad Company, a deed for right of way over & through his farm and lands, situated at Olinger, Lee County Virginia, and the same was subject to the conditions stipulations, and reservations therein set out and fully shown by a copy thereof hereunto filed as part hereof marked "A"

By an inspection of which, it will be seen the said grantee, the defendant Company, was to fully protect the piffi spring and not to injure his water power. These stipulations among other things are fully set out in said deed. And of the performance of which no Complaint is here made

except the injury to the spring and water power hereinafter mentioned.

The spring is a peculiar one, large, bold and intermitent, and issues from a limestone cavern, at the foot of Cumberland (then called Stone) mountain, a short distance from the pliff's dwelling, furnishing an abundant supply of Cold and excellent water, the branch flowing therefrom, is the water power mentioned in said deed.

At the time of, and before the making of said deed, Generator had erected on the branch aforesaid a saw mill, for the manufacture of plank, boards & lumber, the power to run the machinery, being furnished by the water from said spring, and this saw-mill added greatly to the value of Generators property. The power, of course, being the main value, and this was that made him particular, to engraft in said deed its protection & preservation as well as the great convenience of the water for household purposes.

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Your orator relied upon the skill & knowledge of the Company's engineers and Construction force to do the work in a manner, to carry out their Contract and agreement.
As above stated the spring is intermitent, being rather weak at times, but about every 24 hours, it flows in great abundance for a like period, and is then ample for all the purposes of said, machinery - The fountain head or portal of the Cave, is only a few yards north of the cliff dwelling, and on somewhat higher ground.
To the westward of this dwelling there is a deep gorge, leading down from the South side of said Mountain down which, in times of rain & wet seasons, flows what is called dry-branch, after this drainage gorge, is filled with great quantities of surface water, washing down mud gravel & stones, - its natural cut let way west from the said Spring - A rather crude diagram of the situation, accompanies this Bill & is prayed to

Considered herewith as part hereof.
See P. 11
Now the rail-road is Constructed north of the cliff; dwelling between it and the head of said spring, and only a few feet below & South of said spring. In order to get a sufficient fall for said machinery, the flume had to be started, near the spring and north of the rail road track: In the Construction of the road, they, the said Company, made what is called a double Culvert, of stone some four or five feet each, square, and so diverted the Channel of dry-branch, as to throw the water thereof through these same Culverts, made for the Spring, or said mill branch. Now in order to utilize the water power, for said Saw mill the flume had to be laid in one or the other of these Culverts, to reach a point sufficiently elevated to and they very couldn't do being on their right of way get the fall: for it is only a short distance from said Spring down said branch to where it enters Powell river, and said Sawmill was near the high water mark of said river

so there was no chance to better the situation by going lower down, with said Mill, to begin the flume lower down than the head of the spring the fall, was wholly inadequate; for said culvert are some 100 or more feet long, and cover the main part of the fall, in said branch. Large and capacious, as these culverts are, they are at times filled with water, and long before they are full, they augmented by the drainage from dry Creek, ~~they~~ escape through said Culvert, with such force, that it is impossible to fasten the troughs And every time the water rises the flume is washed out, so that your orators water power, instead of being protected, is wholly ruined and rendered worthless. Supposing he had the right to enter and construct in said Culvert, Said Company prepared for the inconvenience and damage done his spring by cutting it off from his dwelling, and forcing him to cross the rail road over a high & rugged embankment, for they made a ten foot fill over his spring path, that they would lay

him an iron pipe from said spring under their road bed, through said Culvert to near his dwelling, they began this by running a 3/4 pipe through said Culvert and stoped it on the bank of the branch your orator was quite as well supplied by the branch as by this pipe laid in the branch.

He is advised that the expression in said deed to protect his spring meant legally, to do nothing that would impede or render his spring less useful or convenient to him. They have violated therefore, that part of the agreement which required them to protect his spring from injury, as well as his water power. or rather have not performed it. Smarting under these injuries, and the loss of his property and other injuries done him, at the October Rules 1892 your Complainant instituted his suit at law for damages which he alleged to be $7000.00 and so they were. The cause was by agreement refered

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...

to D. S. Litton and atty, and proof was taken, but on the trial, the defendant Company insisted no damages were to be considered only such as had accrued from the date of the injuries up to the the institution of the suit, and this your orator is advised was the law. But he was allowed to show the value of his saw mill, then a ruin, and the value of its use upto the time of the bringing of his action. And so was the injury to the spring for that time included. But the permanent injury to his spring and water power, the value thereof to his property was expressly excluded by the Arbitrators and no proof was offered on that point.

Your orator, is advised that said deed having, as he alleges it was, been accepted by said Company they are in law bound to perform its stipulations and agreement, and protect his spring and aqueduct from injury to his water power or if they have violated it to pay in damages for its injury

To have the stipulations terms

agreement of said deed fully and he alleges they having not been so performed and specifically performed and said Company compelled to fully and amply protect said Spring and water power & pay for all damages that have been inflicted upon your orator by reason of its failure from Oct 1872, upto the filing of this bill is the object of this suit. or if mistaken in this or not enforceable in equity then that said deed be set aside cancelled for naught & held void.

Your orator is advised that the damages are cognizable by a Court of equity upon the principal that having jurisdiction to specifically execute Contracts or annul them, to avoid, multiplicity of suits & circuity of actions, it will settle fully all the rights of the parties before it.

Your orator alleges that the annual damage which he sustains is not less than $250.00 an account of which he prays to be taken in this Cause.

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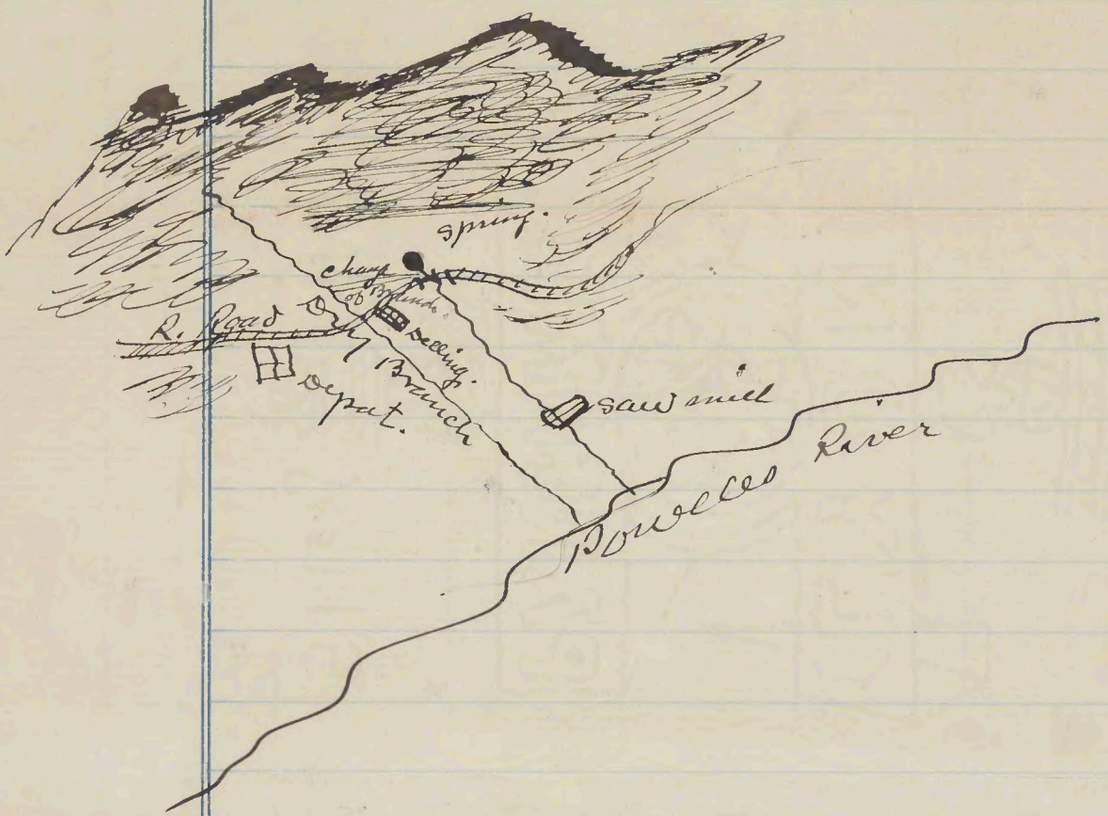
The premises Considered, your Orator prays that Louisville and Nashville Railroad Company be made a party to this bill and that it answer the same, but not upon oath, that being expressly waived. That on a hearing said Company be compelled to so arrange the Construction of its road bed & Culverts, and the drainage from the dry-branch that the same will not interfere with the free & full use of said water power, that they pay such damages as have accrued since the institution of the former suit, or on their failure to do so, that said deed be annulled set aside and Cancelled void; and the damage done your orator property by the Construction of said road be ascertained and fully settled. And for all other further & General relief. May Supra issue &c.

Ridenour & Lowell

(11)


Sprung.
Chang
of Mounds
R. Road
Dry
Branch
Depot.
Saw mill
Powell River

Deffts Costs recovered
2.29
Atty 15.00
Co 25
$17.54

Pltffs Costs
4.27
S .50
$4.77

L. P. & S.

Jacob B. Olinger

vs Bill Chy.

L. & N. Railroad Co

1895 2nd Feby Rules bill filed & spa 20 d & D N
" 1st March rules D N Confd & Cause Set for hearing.

March the 15th 1895
Decree final See Chcy Order Book 188

L.& N.Railroad Company, Defendant.
ads. } In Chancery.
Jacob B.Olinger, Plaintiff.

To the Honorable W.T.Miller, Judge of the Circuit Court for Lee County, Virginia:

The demurrer and answer of the Louisville & Nashville ~~Rail~~ Railroad Company, a corporation organized and existing under and by virtue of the laws of Kentucky, doing business in Virginia, to a bill in chancery exhibited against it in this Honorable court by Jacob B.Olinger.

Respondent says that the complainant's bill is not sufficient in law to call upon it to answer in this honorable court, but that there is good cause of demurrer thereto, and it demurs accordingly, and prays judgement of said demurrer. And not waiving said demurrer, but relying and insisting thereon, should other and further answer be required of it, answering it says:

That it is true that on the 3rd day of September 1889, the complainant made and executed to ~~the~~ respondent a deed for right of way over, and through his farm and lands, situated ~~at~~ at and near Olinger in Lee County, Virginia. It is likewise true that said deed contains some reservations and stipulations which are shown by said deed itself. It is true that said deed contains a provision in the following words, "and said railroad Company is to fully protect from all injury or damage the stream of water which runs the said Olinger's sawmill, and in no way divert its course therefrom, and fully protect said Olinger's spring from all damages" There is no provision in said deed that said Company is not to injure his (Olinger's) water power. It is true that ~~the~~ the said Olinger's spring is a large and bold one; that it issues from a cliff at the foot of Stone Mountain; but if there is anything peculiar about said spring, or if it is intermittent, respondent has no knowledge thereof; nor does respondent see what its peculiar or intermittent qualities, if it has them, has to do with the matter here sought to be investigated. It is true that said

spring is only a short distance from the complainant's dwelling house; that it furnished an abundant supply of water which respondent supposes was of good quality. It is further true that the branch flowing from said spring was used by the said complainant for running the saw-mill which he had erected by the side of said branch. It is true as stated in said bill, that at the time said deed was executed, said complainant had a saw-mill on said branch and that the power to run the same as before stated came from said spring. But respondent denies that said saw-mill added greatly to the value of the complainant's property. Respondent knows nothing of the causes which induced complainant to have ingrafted in said deed the provision above quoted, protecting said stream of water from damages and prohibiting a change or diversion of its course, and neither admits nor denies that he was influenced thereto by his conception of the value of said branch as a power to run machinery. It is true that said spring and the water flowing therefrom was convenient for house-hold purposes, and it is just as convenient at present as it was before said road was constructed. Respondent again states that it knows nothing of the intermittent qualities of said spring, or of the fact that it is sometimes weak and at other times strong, or that about every twenty-four hours it flows in great abundance for a like period, or that it was ample for all purposes of said machinery. Respondent therefore neither admits nor denies said allegation, and requires full and strict proof of each and every one of them, if they are deemed material. It is true as before admitted that the head of said spring is near to complainant's dwelling house, but it is more than a few yards therefrom, the exact distance respondent does not know, but it supposes and alleges that it is from 80 to 100 yards therefrom. Said spring is on higher ground than said plaintiff's dwelling house. It is true that westward from said spring and from said plaintiff's dwelling house there is a gorge or hollow leading down along the south side of the mountain in

the direction of said spring; that in times of freshets and high water, as a matter of course, more or less water accumulates in said hollow or gorge; that perhaps some mud and gravel is washed down by said water, but that was a fact which occurred before the railroad was built just the same as it does now, in times of freshets. Respondent denies that the crude diagram filed with the plaintiff's bill shows anything like correctly where said surface water went off before said railroad was constructed. The principal part of said water run very nearly where it does now, as respondent is informed, intersecting the branch from said spring close to where it does now, perhaps a little lower down and about the Southern portal of the culvert as respondent is informed. It is true that said railroad is constructed North of complainant's dwelling house and between the same and said spring and a few, perhaps twenty or thirty or forty feet below said spring, and the fact, that said road was then located between his dwelling house and said spring and that it would be constructed as located, was as well known to the plaintiff at the time he made said deed as it is now. The fact that the road would be constructed ~~between or~~ on the south side of said gorge or hollow and that the water would be carried along the foot of said embankment into the spring branch at the point where it now enters it was then as well known to the complainant as it now is.

Respondent is not advised as to whether or not the flume had to be started near the Spring in order to get sufficient fall for said machinery. Respondent has been informed that the troughs which carried said water did start from a point near the head of said spring, but it here asserts that with proper construction of the machinery, that the water may be carried from the lower or south end of said culvert which will run machinery with equal power as to start where said troughs originally started. In the construction of its road respondent made over said branch, for the purpose of affording an

outlet for said water, a tripple culvert, each outlet of which is six feet high and four or five feet broad. These outlets are right where said branch originally run and respondent denies that the channel of said stream is in any way diverted. And said outlets afford sufficient, even ample room for troughs through either one of them. Respondent does not know whether said outlets of said culverts are at times filled with water, nor does it know with what force the water, augmented by the drainage from dry creek, sweeps through the same, but it denies that it is impossible to fasten troughs or pipes in said culvert so that they would not be washed out. But on the other hand it here asserts that with proper care pipes can be fastened in either one of the water passages in said culvert so that it matters not how high the water rises in said culvert that they will remain perfectly secure and steadfast.

Respondent says that it is true that while the road was being constructed, it did, for the convenience of the complainant, lay a pipe of something like an inch in diameter from the head of said spring through said culvert in order to carry using water for the complaiant's family through said culvert to a point much nearer his house than the head of said spring and much more convenient to him than it ever was before. This was not a matter of contract. There was no consideration for the promise to carry said water in a pipe through said culvert if such promise was ever made, but it was simply a matter of accommodation to the complainant and his family.

Respondent denies that the expression in said deed "to protect his spring" meant legally, or otherwise, to do nothing that would impede or render said spring less useful or convenient to him. Both complainant and respondent knew at the time said deed was executed that the road bed would be constructed between the head of said spring and the complainant's dwelling house; both knew that a fill of from eight to ten feet in heigth would be made between said house and said spring, and all that respondent contracted to do, all that

complainant asked to be done, was to protect his spring from injury, which has been done. Respondent denies that it has violated that part of the agreement which required it to protect said spring from injury. And respondent further denies that it has violated that part of said agreement in which it undertook to protect from all injury or damage the stream of water which then run the said complainant's saw-mill, and in no way to divert its course therefrom. Respondent says that it is true that the complainant at the October Rules 1892 instituted his suit at law(action on case) to recover $7,000.00 damages; that said cause was, by agreement, by an order entered therein, referred to the arbitrament and award of D.S.Litton, Lewis B.Quillen, G.C Duff, E.S.Bishop and D.L.Jessee, whose duty it was made to settle and adjust all matters of difference between the plaintiff and defendant in said case.; that said arbitrators were to go on the premises and hear such evidence as might be introduced by either party, and return their award to Court. Respondent avers that said arbitrators did go upon the premises; that they did hear such evidence as was introduced by each of the parties, and they did render their award thereon, by which they gave to the plaintiff in that suit, the complainant in this, the sum of $750.00 for the damages and injury done to said premises, all of which was, as respondent is informed, for the injury conceived to have been done to complainant's water power, or principally so. But respondent denies that said sum was for the value of the use of said saw-mill and water power up to the time of the bringing of said action at law. It further denies that the injury to the spring, if any, was taken into consideration by said arbitrators, only extended up to the bringing of said suit, because no injury had been done to said spring, and then as now, the injury asserted was the fact of the construction of said road between said spring and the complainant's dwelling house. Respondent here asserts that said sum of $750.00 was given by said arbitrators for what they believed was the permanent injury done to said

stream of water as a water power, and perhaps they may have considered that some inconvenience resulted to the complainant by construction of said road between his house and spring and they may have included something in their award for said inconvenience. But in any event, whatever was included in said award for any injury, whether water power or spring, was for the permanent injury thereto, and properly so. Respondent is advised that the law is, that if the injury complained of was caused by the erection of a structure or making use of land which the defendant has the right to make and to continue to use after made, the injury resulting therefrom is regarded as committed once for all, and that the action must be brought to recover entire damages past and future; that if the injury is of such a character that its continuance is necessarily an injury, then when it is of a permanent character and will continue without change from any cause except human labor, the damage is original and may and must be fully estimated and compensated; successive actions will not lie. And this was the idea of the plaintiff in his former suit which he very fully asserts in his declaration in the following language: "And in constructing said road bed and track the said defendant Company on the ___ day of _____1889, and on divers other days since that time up to the bringing of this suit made a large and high fill over said saw-mill branch near to and across the head waters thereof, and dug over and through the plaintiff's land and also on said right of way divers ditches and water ways and drains leading into the saw-mill branch near the head-waters thereof, and constructed in said saw-mill branch and ravine three culverts for the passage and conduct of said stream and the water which flows from the adjacent hills. And the plaintiff avers that by reason of said fill and the confining of the water in the culverts and channel aforesaid in times of freshets and high water the current and stream is so rapid and strong that it washes out the plaintiff's troughs and water ways and thus wholly destroys the plaintiff's water way to his said saw-mill, and wholly ruins the same."

Respondent denies that the permanent injury to the complainant's spring and water power, the value thereof to his property, was expressly excluded by the arbitrators, and no proof offered on that point. But upon the contrary, as heretofore stated said arbitrators were expressly required to settle all matters of difference between the plaintiff and the defendant in that case. The permanent injury, that total ruin, of said stream as a water power, was alleged in said declaration. That was one of the issues made and properly made. The work resulting in said injury was lawful work which the respondent had the right to construct; it was of a permanent nature, and when damages were once recovered by him, it was for all the damages that resulted or could result from said work, and if the plaintiff was not satisfied with it, it was his plain duty to manifest that dissatisfaction in exceptions to the award of said arbitrators. Not having done so, it matters not from what cause, he can have no further action for said injuries.

It is true that respondent accepted said deed. It is equally true that respondent has kept the stipulations and agreements contained therein, or has compensated the complainant in damages for its failure to do so, wherein it failed.

Respondent denies that damages of the kind here alleged are cognizable by a court of equity upon the principle of having jurisdiction to specifically execute contracts, or to annul them. The assessment of damages belongs to a court of law to be ascertained by a jury, and with which equity has nothing to do.

Respondent here alleges that the works constructed by it over and upon its right of way were lawfully constructed; that it obtained said property from the complainant for the purpose of doing thereon the very specific work which it has done; that said work was done in the most prudent and careful manner with a view to do as little injury to the property of the complainant as was possible to be done by said work. And it here again alleges that if any injury resulted from said work

which entitled the complainant to damages, that those damages have been ascertained and fully paid, which will fully and at large appear by reference to the declaration of the plaintiff in said suit at law, the order submitting all questions in said suit to arbitration, the award of said arbitrators &c. copies of which are herewith filed marked "Record."

Respondent now having answered said bill as fully as it is advised it is material or necessary to answer the same, and here expressly denying every allegation contained in said bill not herein before expressly admitted or denied, prays to be hence dismissed with its costs c&.

Attest.

Louisville & Nashville Railroad Company,

By M. H. Smith, President.

J. J. Eee
Secretary.

C. I. Duncan
Attorney.

1895.

March 11 The first fifteen lines of page four is accepted to, as is the first twenty one lines on page 6 the assertion of which affords no defense to this action. That form on page 4 because the plff has no right to lay troughs or pipes for the defendants Culvert. That on page 6 affords no legal defense, because only the matters involved in the suit were referred - no others or appeals by the Record Books for by the defendant Company

Prudence F Lowell

L. & N. R. R. Co
ads. Answer
Jacob B. Olinger

Filed in open court and
by leave thereof March
the 9th 1895
A B Money Clerk

Jacob E. Olinger — Complainant

VS — In Chancery

Louisville and Nashville Railroad Co. — Defendant

This cause came on this day to be heard on the bill of the complainant and the exhibit therewith, the demurrer and answer of the defendant, the joinder in said demurrer by the ~~defendant~~ complainant and was argued by counsel. On consideration whereof the Court is of opinion that the bill in said cause does not show ~~a sufficient~~ the plaintiff has a complete legal remedy if any & that a cause of action in a court of equity, it is therefore adjudged ordered and decreed that the demurrer to said bill be and the same is sustained, and that the plaintiff's bill be dismised, and that the Defendant recover of the Plaintiff its costs about its defense in this cause expended, for which execution may issue, and the cause id stricken from the docket.

Jacob B. Olinger

vs. Decree

L. & N. R. R. Co.

Final.

O. B.

Page 188

Enter this decree

N. Pill

March 15th 1898

This Deed made this 3rd Day of September 1889 between John B Olinger and Martha his wife, of the County of Lee and State of Virginia, parties of the first part and the Louisville and Nashville Railroad Company, a corporation a corporation doing business under the Laws of Virginia, party of the second part Witnesseth, That in consideration of the first that said Louisville and Nashville Railroad Company has located and now proposes to construct its Cumberland Valley Branch over the lands of the said J. B. Olinger, situate lying and being in the County of Lee and State of Virginia and the advantages to be derived therefrom to the said J. B. Olinger and in further consideration that said Railroad Company erect and keep in good repair suitable and necessary crossings and cattle guards over said road for the use of said Olinger and his heirs and the further consideration of the sum of one Dollar Cash in hand paid the receipt of which is hereby acknowledged, the said

parties of the first part have this given, granted, bargained and sold, and by these presents do convey to the Louisville and Nashville Railroad Company, its successors and assigns for its Cumberland Valley Branch, the strips pieces or parcels of land bounded and described as follows, Tract No. 1. Beginning at a point in the center line of said railroad where it crosses the Division line between the land of the said J. B. Clinger and J. A. Clinger the bearing of which is S 34° 30" E thence with a width of 100 feet measured 50 feet equally on each side of said center line for a distance of 1933 feet thence with a width of 160 feet measured 80 feet on each side of said center line for a Distance of 500 feet thence with a width of 100 feet measured 50 feet equally on each side of said center line for a distance of 4246 feet to where said center line crosses the division line between the land of the said J. B. Clinger and Carl Bailey the bearing of which is N 32 E and containing

1.10 acres be the same more or less
Tract No 2 Beginning at a point
where the center line of said railroad
crosses the division line between said
J. B. Olinger and Carr Baily the
bearing of which is N 34 W thence
with a width of 100 feet measured
50 feet equally from said centerline
for a Distance of 1346 feet to where
the said centerline crosses the
Division line between the lands
of the said J. B. Olinger and Carr
Bailey the bearing of which said
line is S 33° 45' W and containing
3.10 acres be the same more or less,
and said railroad company is to
fully protect from all injury or dam-
age the Stream of water which
runs the said Olingers Saw mill
and in no way divert its course
therefrom, and fully protect said
Olingers Spring from all damages
and after said road is completed
said Olinger is to have the right
to cultivate and use said land
as nearly up to the road bed on
each side as can be safely done
To have and to hold said Strip or

parcel of land with its appurtenances and privileges to the said Louisville and Nashville Railroad Company its successors and assigns forever. And the said parties of the first part for themselves their heirs and assigns do hereby release the said Louisville & Nashville Railroad Company its successors and assigns from any further payments for or on account of the appropriation and occupancy of said Strip of land as well as for all damages that may accrue by or result from the location, construction and operation of said Cumberland Valley Branch of the Louisville and Nashville Railroad over and upon said Strip or parcel of land. And the said J.B. Clinger warrants specially the title to the land hereby conveyed. Witness the following Signatures and Seals this Day and year first above written.

Jacob B. Clinger [Seal]

Martha her X mark Clinger [Seal]

Virginia in Lee County to wit:

I John Riddle a Justice in and for the county and State aforsaid do certify that Jacob B. Olinger & Martha his wife whose names are signed the forgoing Deed, bearing date the 3rd Day of September 1889, have acknowledged the same before me in my county aforsaid.

Given under my hand this 7th Day of September 1889.

John Riddle J.P.

Virginia Lee County Court Clerks office Nov 11th 1889.

The forgoing deed bearing date Sept 3rd 1889 Returnn J.B. Olinger & Martha his wife of Lee County Va Of the one part and the Louisville and Nashville Railroad Company of the second part, was admitted to record upon the forgoing certificate of John Riddle a Justice of the peace for Lee county Va.

Teste John R. Gibson clerk

A copy - Teste: D. V. K. Richmond clerk

John B. Clinger
to
Deed
&
Lot to Railroad Co

Recorded in Deed
Book No 24
Page 331

"A"

C 1.25
S. V. F. Richmond Clerk

Virginia, Lee County, to wit:--

Jacob F.Olinger, plaintiff, complains of the Louisville and Nasheville Railroad Company, a body corporate doing business in the State of Virginia, which has been summoned &c.of a plea of tresspass on the case, for this that the said plaintiff before and at the time of the committing of the several grievances and tresspasses herein-after mentioned was and from thence hitherto hath been and still is possessed of a certain farm messuage tenement and close, with its appurtenances, situatedin the Poor Valley in the County and State aforesaid, whereon the plaintiff resides-on which said farm there was and still of right ought to be, a large bold and valuable spring of water, the branch from which flowed over and through the plaintiff's said lands & close down a revine and conducted in troughs furnished the water power for an overshot wheel which drove the plaintiffs saw mill; and on which said farm there was also a superior spring of mineral water commonly called a chalebyate spring; and on which there was also divers fruit trees grain grass, herbage and meadow land, situated outside the defendant company's right of way hereinafter mentioned. Through which said farm and close and near to and in and against which said chalebyate spring and water power the defendant company was on the _____ day of _____1889, threatening to condemn by law for right of way for its road bed and track a strip of land 100 feet wide, when the plaintiff, as claimed by said defandant company, made and executed a deed to the said defendant company for said right of way _____ feet in width over and through said farm and close and in said pretended deed it was expressly stipulated and agreed among other things, that the defendant Company was "to fully protect from all injury or damage the stream of water which runs to said Olingers saw mill and in no way divert its course therefrom and fully protect said Olinger's spring from all damages."

And the pl'ff avers that said defendant Company accepted

the same and constructed its road bed & tract in over and through said land and close on said right of way: and in constructing said road bed and track the said defendant Company on the _____day of _____ 1889 and on divers days since that time up to the bringing of this suit made a large and high fill, over the said saw mill branch near to and across the head waters thereof, and dug over and through the plaintiff's land, and also on said right of way divers ditches and water ways and drains leading into said saw mill branch near the head waters thereof, and dug over and through the plffs land and also on said right of way divers ditches and water ways and drains leading into said saw mill branch near the head waters thereof, and and constructed in said mill branch and ravine, three culverts for the passage and contract of said stream the water which flows from the adjacent hills- and the plaintiff avers that by reason of said fill and the confining of the water in the culverts & channnels aforesaid in times of freshets and high water the current and stream is so rapid & strong that it washes out the plffs troughs and water way, and thus wholly destroy the plffs water way to his said mill and wholly ruins the same, and which said water power and stream was of great value, to wit of the value of $3000.00 and the said defendant Company in the construction ofits road bed and track aforesaid, threw in andupon the plaintiffs land and close great quantities of rock dirt gravel and debris which damaged the plaintiff's land, the sum of $500.00 and in the construction aforesaid blew down, destroyed injured and wholly ruined the plffs orchard of great value to wit of the value of $500.00.

And the said defendant company in the construction of its road bed and track aforesaid, made a large fill of loose dirt in and upon the plaintiff's chalebyate spring, stopping the flow therefrom, covering up the heard of said spring and wholly ruining the same, and which is of great value, to wit of the value of $3000.00. And the plaintiff avers that the said de-

fendant Company broke and entered said close and destroyed the water power aforesaid, and filled up and covered over the chalebyate spring aforesaid and tore down blew up and destroyed the orchard aforesaid and blew over in and upon the plffs lands the dirt rock & gravel aforesaid, and that the damage to each were the amounts above stated.

All which said acts and doings were done without the leave or license of and against the will of the said plff. for a long space of time, to wit for the time aforesaid. And thereby and therewith during all the time aforesaid greatly incumbered and still so emcumbers the said close and premises, and hinders and prevents the said plaintiff from having the use enjoyment and control thereof in so large and complete a manner as he might lawfully and otherwise would have had and done: and other wrongs and injuries to the plaintiff then and there did to to the plffs damage $7000.00, hence suit &c.

And for this also, that heretofore to wit, on the day and year aforesaid, the plaintiff was possessed of a certain other messuage tenement and close, to wit, the messuage & close first aforesaid, on which said last mentioned tenement and close, there was and still of right ought to be a large bold and valuable spring of water, the branch of which served as a water power to run and drive the plffs saw mill on said close to wit the saw mill first aforesaid, and on which said last mentioned close & tenement there was and still of right ought to be a fine valuable chalebyate & mineral spring of water of great value, to wit of the value of $3000.- And a valuable young orchard of great value, to wit of the value of $500.00.

And the plff avers that the defendant Company broke & entered said last mentioned close and tenement on the ____ day of _____ 1889 and on divers other days & times since that time up to the bringing of this suit and with men wagons, wagons carts mules & horses cut dug excavated filled blasted blew hauled and scraped and dug its road bed and track in over and

through said last mentioned close and tneement, made culverts & fills over and upon said saw mill stream & branch filled up the natural channel thereof and so narrowed the same that the water and drainage flowing through and down the same in times of freshets and high water washes away the plaintiffs troughs and water way and wholly r ins the same. And that said defen- ant Company filled with loose dirt gravel & rocks the head waters, branch and flow from said chalebyate spring wholly covering up and destroy ng the same, that said Company blew in and upon said orchard rock dirt & gravel tore down, blew up and destroyed the same and blew in and upon the plffs land, grass & grain a large quantity of rock gravel dirt and slate. All of which acts and do ngs were done without the leave or license of and against the will of the said pla ntiff for a long space of time to wit, forthe time last aforesaid.

And thereby and therewith during all the time aforesaid greatly incumbered and still hinders incumbers the said close & premises and hinders and prevents the said plff from having the use engyment and control thereof in so large and co plete a manner as he might lawfully and otherwise would have had and done: And other wrongs and injuries to the plff then and there did, to the plaintiff's damage $7000.00 . hence suit &c.

A.L.Pridemore,

P.q.

Virginia,

At a Circuit Court continued and held for Lee County at the Court house thereof on the 9th day of March 1893.

Jacob B.Olinger. Plff.

vs. In Case.

L.& N.R.R.Co. Deft.

This day came the parties by their Attorneys, and mutually submit all matters of difference between them in this suit to the final determination of D.S.Litton, Lewis B.Quillen, G.C.Duff, E.S.Bishop and D.L.Jessee, and agree that their award or the award of a majority of them, thereupon is to be made the judgement of the Court, and that said Arbitrators after being duly sworn, are to go on the premises and hear such evidence as may be introduced by either party, and return their award to this court. And the same is ordered accordingly

This day D.S.Litton, L.B.Quillen, E.S.Bishop, D.L.Jessee and G.C.Duff, Arbitrators, personally appeared before me the undersigned and made oath that in the matter of controversy submitted to them this day, that they would fully hear all the evidence produced before them by the plff. Jacob B.Olinger and the defendant Company the Louisville and Nashville Rail ~~Rod~~ Road Co. and well and truly render our award in the cause according to the evidence and the law as we shall understand it. Given under my hand this May 5th 1893.

D.C.Sewell,

Notary Public for

Lee Co.Va.

Jacob B.Olinger,

vs.

Louisville and Nashville R.R.Co.

We the undersigned Arbitrators in the above styled cause of Jacob B.Olinger, having met pursuant to ~~xxxxxxxxxx~~ agreement on the 5th day of May 1893, upon the premises of the plff, and after having~~x~~ heard the testimony produced by each party, do render the following award,viz: We find for Jacob B.Olinger, the plaintiff seven hundred & fifty dollars and costs of suit and arbitration.

And we further award that the sum of five dollars be paid each of the Arbitrators for their services one day, and that the defendant Company pay the same, pay that and the other ~~xxxx~~ costs. Given under our hands this the day and year first ~~xfxx~~ aforesaid.

L.B.Quillen

D.S.Litton

D.L.Jessee

G.C.Duff

E.S.Bishop

Filed May 10th 1893,

J.A.G.Hyatt,C.

Jacob B. Olinger

vs

Ches.

L & N. R. R. Co.

Exhibits with the answer of the L & N. R. R. Co

Filed march the 9th 1895

A B Munsey

Clerk

The "SOUTHWEST VIRGINIAN" Book and Job Print, Jonesville, Va.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee---Greeting:

WE COMMAND YOU, That you summon Louisville & Nashville Rail Road Company, a body Corporate

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said Court on the 3rd Monday in February, 1895, to answer a bill in Chancery, exhibited against St Clinger in our said court by Jacob. B

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the 30th day of January 1895, and in the 119th year of the Commonwealth.

A B Munsey Clerk.

Jacob B Olinger

vs. { SUPŒNA IN CHANCERY.

L & N. R.R. Co

A L Pridemore p. q.

To 2nd Feby Rules,

Circuit Court.

There being no president cashier treasurer general superintendant or any of the directors of the L. & N. R.R. Co. — found in my resident of my county I executed the within summons by delivering a true copy of the same on the 6 day of Feb. 1895 to T. A. Brownlee depot agent of said Railroad company at its depot at Pennington Gap in the said county of Lee and state of Virginia the said T. A. Brownlee being a resident of said county and said depot being the place of business of said company and of said T. A. Brownlee agent as aforesaid

This Feb the 7. 1895

C. E. Flanary S. L. C.